Attitudes Are Contagious:

Is Yours Worth Catching?

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Flashback to 6:00 pm yesterday: My head is pounding and pulsating. My heart is racing, but my mind is racing even faster. I am worried about myself as I calculate the odds of safely driving 32 miles from the court reporter's office to my house in this condition. I consider a stroke, a heart attack, or simple hypoglycemia as possible causes. As I slide into the driver's seat, I reassure myself that all of this is only the physical manifestation of extreme stress. After all, who wouldn't be stressed after the week I had—and it is only Wednesday.

As I traverse the traffic out of downtown Miami during rush hour, I reflect on the past three days. I have spent more than a dozen hours analyzing and evaluating thousands of pages of medical records, three hours in a pre-deposition meeting with the lawyers who retained me, five hours in deposition giving testimony about my opinions in the death of an 89-year-old woman, and two hours commuting.

Welcome to a day in the life of an expert legal witness.

The Big Picture

As healthcare professionals, it is our duty to provide proper care to our patients and long-term care residents. When family members tour our facilities, admission directors promise the best care available and reassure family members that they don't have to worry about a thing; our skilled and dedicated staff will take care of it all. Quite often, things turn out well, and we have satisfied families who are forever grateful. But then again, sometimes things don't go as planned.

In most industries, a dissatisfied customer will write a complaint letter, ask for a refund, or have a defective product replaced. In our industry, dissatisfied customers file lawsuits. Each state has unique laws about litigation involving nursing homes, so some states have bigger problems with this than others.

Whether an actual suit is filed or not, the root cause of customer dissatisfaction must be examined if we are to advance as an industry.

The Chain of Events

The chain of legal events often begins with unmet needs and disappointment. Family members believe that promises were made and broken, and in turn, disappointment becomes dissatisfaction and anger. The anger then turns to allegations and litigation.

Most of the cases I am working on today involve people who died in 1999 or 2000. The staff members involved can hardly recall the resident, much less the details of the care they provided. This leaves the medical record as the only source of information and the focus of discussion. Unfortunately, most charts have documentation issues ranging from incomplete entries and inconsistencies to missing pages that can't even be located. It is relatively easy to obtain a hefty settlement from a nursing home, because the written documentation often makes it hard, if not impossible, to put the precise story back together again after several years.

"Every interaction is a seed. If you plant crab apples, don't count on harvesting Golden Delicious." — Bill Meyer

The legal process closely examines the minutiae of the daily documentation. Every note on every page is read and analyzed. Although the documentation is reflective of the care a resident received, it doesn't help us understand why family members are angry enough to sue. Some people sue

family members are often focused on the human care and treatment they and their loved ones received. For example, in a recent deposition, a daughter was asked about her complaint against the nursing home. She replied that she brought in clothing for her mother, but whenever she visited, her mom was in a hospital gown. She complained to the nurse about this, but the nurse didn't seem overly concerned. The nurse explained that this woman's mother was often in a hospital gown because they were short-handed. Three years later, this was the first thing on the daughter's mind. Her main complaint was not about the medical care; it was about the human care. The daughter probably wasn't even qualified to know if the medical care was good or bad, and she probably didn't even have an opinion on that. What she recalled was the way she and her mother were treated.

In another case, the same question was asked to open the deposition testimony: "What are your complaints about the nursing home?" A son told out of greed or financial reasons, but most only take this serious step because they genuinely believe the system has failed them. If we have failed, it is our duty and responsibility as long-term care professionals to find out where the problems are and attempt to fix them. To do this, we have to carefully listen to what family members say in their depositions about the reasons they are suing.

While the attorneys are concerned about the chart and what was and was not documented,

Table 1. Examples of Common Documentation Problems

Erroneous or Fraudulent Entries: A nursing home transfers a resident to the hospital on Monday at 1:00 pm, but someone charts that she ate 75 percent of Monday's dinner on the meal intake record and initials that she was provided evening mouth care and bed-time care.

Blame: A speech therapist charts that she told the dietitian the resident required nectar-thickened liquids, but kitchen staff served regular liquids.

Conflicting Information: A nurse charts that the resident has a good appetite and eats 75 percent of meals. On the same day, the dietitian charts that resident has poor-to-fair appetite and eats only half of meals.

Illegibility: Chart notes cannot be read because of poor handwriting, poor copy, poor printout, or other problems.

Unapproved and Misunderstood Abbreviations: An order for "SF HS" is interpreted as salt-free house supplement when it was intended to be sugar-free health shake.

Gaps and Omissions: Notes skip weeks at a time, making it difficult to determine the condition and treatment of the resident during that time period.

Inconsistent with Required Practice Standards: Charting should adhere to the facility policy on issues, such as cross outs, charting in the incorrect resident's chart, late entries, and other documentation issues.

the story about the day he went to the desk and told the nurse his mom needed some help to use the bathroom. The nurse told him someone would be right in to help. After about 15 minutes, his mom had an urgent need to use the bathroom; yet no one had come to help. He returned to the desk and again asked for assistance. This time the person behind the desk told him that no one was available. Now angry, the son told the woman that his mother would end up urinating in her bed if no one helped him. The nurse told him that was fine, and the night shift would clean her up tonight. He was horrified and disgusted.

Unfortunately, several months later, his mom fell while trying to get herself to the bathroom. She fractured her hip and died soon after the incident. He was now suing, because he believed her death could have been avoided if the staff would have been more attentive to her needs. While this seems quite simple on the surface, consider that this resident was 91 years old and had multiple medical diagnoses, including osteoporosis, dementia, and vertigo. Upon examination of the chart, the plaintiff's attorney found that in the three years she was at this facility, she lost about 20 pounds, fell twice before, had several skin tears, and battled respiratory and urinary tract infections. Suddenly, this lawsuit was about wound care, inadequate nutrition and hydration, inadequate staffing, physician order procedures, infection control, and many other topics.

The records subpoenaed for this case included five years of records from the assisted living facility (ALF) where she resided prior to the nursing home admission, three years of nursing home records, seven doctors' office records, five hospital charts from three different hospitals, two policy and procedure manuals, three state surveys, and 17 depositions thus far. Could this have been avoided?

Humans Caring for Humans

Most of the families we deal with have never before had a relative in a nursing home, and most do not work in the medical field. If this is a person's first experience navigating the maze of healthcare, how does he or she form expectations? Has this individual thought about what he or she wants for the family member, or is it assumed that the care in the facility will equal or even exceed the level of care at home?

Do we ever ask questions of family members to gain an understanding about how they feel or what they expect? For example, a common complaint from family members during deposition is that it took too long for a call bell to be answered. When asked how long it should take for the call bell to be answered, family members often cannot say. They know they want "good" care but are uncertain as to what that means. It is our duty to provide information and help them through the process.

Communication and courtesy can go a long way in helping someone in an unfamiliar situation. Most family members simply want comfort, understanding, respect, and dignity. Providing this is part of our job, too. It is often said that people do not sue people they like.

The sad reality is that most of our patients in long-term care are heading toward the end of life. This can bring feelings of guilt, depression, and regret—not only to the family but to the facility's employees as well. Employee burnout can be a serious problem in long-term care, but by building supportive environments, we can help each other and improve care.

Documentation is Key

Proper documentation will always be a key issue, because it is crucial for good care. The medical record provides communication between different shifts and disciplines within the facility. Since nursing homes are busy places, documentation is often left for the end of the shift. But this practice invites errors and omissions. Documentation should be done systematically as care is given.

The actual forms and papers on which we document are often hard to follow or don't guide the writer. If this is the case, investigate new forms or design your own. Assessment forms and record-keeping forms should be easy to use and provide prompts to guide the writer as to what should be charted. With the advent of desktop publishing, the electronic record, and the numerous companies that produce documentation records, there is no reason for forms to be a hindrance rather than a help (Table 1 outlines additional common problems with documentation).

Replacing old systems and bad habits with new ones is never easy, but it is an important step to producing legally defensible medical records.

The Grassroots Movement

The nursing home litigation crisis is a hot political topic, and many people believe that it is going to take legal reform to do anything about it. That idea can be simply disproved if instead we realize that every individual employee has the power to determine the level of customer satisfaction in his or her own facility. Treat people the way you would want to be treated or how you would want your own family to be treated.

Every personal interaction is an opportunity for you to show your professional attitude to the resident. Every interaction is a chance to leave a good impression. Make sure when the resident and his or her family members reflect on the care they received, they can say "Today at the nursing home I dealt with..."

- Kind, caring, compassionate caregivers
- Knowledgeable people whose training is on par with their duties
- Staff that showed sincere concern and empathy
- Team players
- Good communicators who helped me understand the situation at hand
- People with a professional appearance and presentation
- Someone who recognizes when to step back as well as when to push forward.

Only we can put an end to the nursing home legal crisis, so let's gear up to fix our industry ourselves. We wash our hands as part of the universal precautions, because we know germs are contagious. Good attitudes are contagious too—but don't wait to catch it from others. Be a carrier!

Author's note: *Although the cases and examples provided in this article are true, they are composites of many actual cases and not meant to represent a particular person or facility.*

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